

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
(Northern Division)**

XEROX CORPORATION

Plaintiff

V.

PHOENIX COLOR CORPORATION, et al

Defendants

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* **Civil Action No.:** WDQ 02 CV 1734

MOTION TO STRIKE AND MOTION FOR PROTECTIVE ORDER

Xerox Corporation, Plaintiff, by and through its attorneys, Sidney S. Friedman, Rosemary E. Allulis, and Weinstock, Friedman & Friedman, P.A., and pursuant to the Federal Rules of Civil Procedure, Rules 26(a), 26(c), 26(e) and 37(c), hereby files this Motion to Strike, and for a Protective Order with respect to Defendants' expert witness report, and for good cause states:

1. This Court entered its Scheduling Order on October 31, 2002.
2. Plaintiff's Rule 26(a)(2) expert witness disclosures were due on December 24, 2002.
3. Defendants' Rule 26(a)(2) expert witness disclosures were due on January 23, 2003.
4. On January 23, 2003, Defendants submitted an expert report completed by

Charles M. Coor of CAP Ventures, Inc.

5. Pursuant to this Court's Scheduling Order, all discovery was to close by March 10, 2003.

6. On September 12, 2003, Defendants submitted a "supplemental" report from their expert witness.

7. This report is supposedly based upon information that was not available to the expert at the time the Rule 26(a)(2) disclosures were due.

8. The scope of this second report goes well beyond the scope of expert testimony and opinion that was disclosed in the January report.

9. There is no substantial justification for this late Rule 26(a)(2) disclosure; the information that the expert claims was not available to him, has actually been available for months.

10. Additionally, because the scope of the two reports is so contrasting, the only reasonable explanation is that the January 23, 2003 report failed to comply with the requirements of Rule 26(a)(2).

11. If this report is not excluded, then Plaintiff's case will be prejudiced.

12. As such, Defendants should be precluded from using the September 12, 2003 report at trial, and the expert's testimony should be limited to those opinions as disclosed in the January 23, 2003 report.

WHEREFORE, Xerox Corporation, Plaintiff, requests this Honorable Court to:

- A. Grant its Motion to Strike Defendants' Rule 26(a)(2) report dated September 12, 2003;
- B. Grant its Motion for a Protective Order, limiting Defendants' expert witness testimony to those opinions as disclosed in the January 23, 2003 report;
- C. Alternatively, grant Plaintiff leave to name a rebuttal expert witness.

Respectfully Submitted,

WEINSTOCK, FRIEDMAN
& FRIEDMAN, P.A.

_____/S/_____
Sidney S. Friedman

_____/S/_____
Rosemary E. Allulis

Attorneys for Plaintiff

Executive Centre
4 Reservoir Circle
Baltimore, Maryland 21208-7301
(410) 559-9000

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ORDER

Upon Motion by Plaintiff herein for an Order striking Defendants' Rule 26(a)(2) expert witness report dated September 12, 2003, and for protective order limiting Defendants' expert witness testimony to those opinions as disclosed in the Rule 26(a)(2) report dated January 23, 2003, and any response thereto, pursuant to Federal Rules of Civil Procedure 26 and 37(c), it is this _____ day of _____, 2003, hereby

ORDERED: That Plaintiff's Motion to Strike is hereby **GRANTED**; and it is further

ORDERED: That Plaintiff's Motion for Protective Order is hereby **GRANTED**; and
alternatively, it is

ORDERED: That Plaintiff is granted leave to name a rebuttal expert witness.

Date

Judge,
United States District Court
for the District of Maryland

cc:

Sidney S. Friedman
Weinstock, Friedman & Friedman, P.A.
Executive Centre
4 Reservoir Circle
Baltimore, Maryland 21208-7301

Robert A. Gaumont
Piper Rudnick
6225 Smith Avenue
Baltimore, Maryland 21209

